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March 17, 2009

## **AGENDA ITEM 6**

**TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION  
COMMITTEE**

**I. SUBJECT:** Public Hearing and Committee Recommendation:  
Proposed Amendments to Regulations for Risk Pools

**II. PROGRAM:** Retirement

**III. RECOMMENDATION:**

Staff recommends that, subject to the results of the public hearing, the Committee recommends that the Board of Administration adopts the following proposed regulations changes:

- Amend § 588.1 to clarify the effective date of the pool's mandated benefits for plans participating in risk pools.
- Amend § 588.2 to provide staff with the authority to place a new contracting agency in an individual non-pooled plan rather than in a risk pool if CalPERS actuarial staff deem its necessary to protect pooled employers from potential unfavorable additional costs attributable to new contracting agencies.

**IV. ANALYSIS:**

At its December 2008 meeting, the Board authorized staff to proceed with amendments to § 588.1 and § 588.2 of Article 7.6 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations to modify the criteria under which contracting agencies with less than 100 employees may participate in a risk pool, and specify an effective date for benefits mandated by pooling.

The *Notice of Proposed Regulatory Action* was published in the California Regulatory Notice Register (CRNR) 2009, No. 1-Z, January 2, 2009 (see Attachment A). In this *Notice of Proposed Regulatory Action*, a public hearing has been noticed for March 17, 2009. The written comment period for the proposed regulatory action closed on February 16, 2009. There were two comments received by CalPERS and those comments, along with CalPERS' responses, are included as Attachment B of this item.

The first comment was aimed at existing pooling provisions rather than at the specific proposed amendments to existing regulations. They were inquiring about the cost of mandated pooling benefits. Such mandates are statutory.

The second comment was aimed more at pooling than at the specific proposed amendments to existing regulations. The second comment indicated the agency's support of the proposed amendments to the risk pool regulations. In addition, it proposed to further amend Section 588.2 to ensure that all existing risk pool agencies would be noticed in the event the CalPERS Board were to hold a hearing on whether an employer would be permitted to join a pool. Note that once a hearing is scheduled by the Board, public notice is required by law. Therefore, it is not necessary to add language requiring notice.

For additional details on the comments and the answers provided by CalPERS staff, please see Attachment B.

Staff does not recommend any changes to the proposed regulations as a result of these written comments.

The purpose of the public hearing is to allow the public to present testimony regarding the proposed regulatory action. The Committee is not required to respond to these comments during the hearing; rather, all comments must receive a response from CalPERS as part of the final rulemaking file.

At the conclusion of the public hearing, the proposed regulation changes, this agenda item, and a summary of any public comments which have been received, will be provided to the full Board for consideration. If the Board decides to adopt the proposed regulation changes, the rulemaking file will be forwarded to the Office of Administrative Law (OAL) for review and approval. Once OAL has approved the proposed amendment, it will be forwarded to the Secretary of State for filing and publication in the California Code of Regulations. The amended regulation will become effective 30 days after filing with the Secretary of State.

**V. STRATEGIC PLAN:**

Amending § 588.1 and § 588.2 support Goal V. of the CalPERS' Strategic Plan. The strategic goal V. reads as follows:

Provide sustainable pension benefit products and services responsive to and valued by members, employers, and stakeholders.

**VI. RESULTS/COSTS:**

The adoption of the proposed amendments to § 588.1 and § 588.2 will not result in additional costs.

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Ron Seeling, Chief Actuary  
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**ATTACHMENT A**  
**NOTICE OF PROPOSED REGULATORY ACTIONS**

**ATTACHMENT B  
WRITTEN COMMENTS  
& CalPERS RESPONSES**